

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

RAFAEL TORMES-ORTIZ,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 97-1618 (JP)

CERTIFICATE OF APPEALABILITY AND ORDER

The Court has before it Petitioner Rafael Tormes-Ortiz's ("Tormes") Motion for Certificate of Appealability (No. 70), as well as a Motion for Certificate of Appealability (No. 73) filed by Peter John Porrata, Esq., who has entered an appearance on behalf of Petitioner Tormes. On December 27, 2006, the Court entered final judgment dismissing with prejudice Petitioner Rafael Tormes-Ortiz's Complaint for relief under 28 U.S.C. Section 2255. Accordingly, pursuant to 28 U.S.C. Section 2253(c), the Court **GRANTS** Petitioner's Motions (**Nos. 70 and 73**) and **ORDERS** that this case be certified for appeal.

The Court also has before it Petitioner Tormes' Motion for Leave to Appeal *in forma pauperis* (No. 71) and First Motion for Leave to File Document motion *in forma pauperis* (No. 72). Rule 24(a)(1) of the Rules of Appellate Procedure requires that a party who desires to appeal *in forma pauperis* must file a motion in the district court

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attaching an affidavit which shows a party's inability to pay or to give security for fees and costs, claims an entitlement to redress, and states the issues that the party intends to present on appeal. Fed. R. App. P. 24(a)(1). The Court notes that the Prison Litigation Reform Act of 1995, which imposes filing fee requirements on prisoners, does not apply to *habeas corpus* cases brought pursuant to 28 U.S.C. Sections 2254 or 2255. The Court **GRANTS** Petitioner's motions (**Nos. 71 and 72**) for leave to proceed *in forma pauperis*.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 28th day of May, 2007.

s/Jaime Pieras, Jr.
JAIME PIERAS, JR.
U.S. SENIOR DISTRICT JUDGE